

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESSE L. REED,

No. C 08-2858 MHP (pr)

Petitioner,

ORDER

v.

ROBERT L. AYERS, warden,

Respondent.

In this habeas action, petitioner has challenged a decision by the Board of Parole Hearings that found him not suitable for parole. The matter is now before the court for consideration of respondent's motion for a stay pending a decision in a particular parole-denial case pending in the Ninth Circuit that may resolve some or all of the issues in this case and petitioner's motion for habeas relief due to respondent's "failure to prosecute."

In Hayward v. Marshall, 9th Cir. Case No. 06-55392, the panel's published decision, 512 F.3d 536 (9th Cir. 2008), was vacated when rehearing en banc was granted on May 16, 2008. The en banc oral argument took place on June 24, 2008, and the parties have finished their original briefing, as well as two supplemental rounds of briefing. Although it is likely that Hayward will provide guidance for analyzing parole denial cases, there is no set date for a decision in Hayward. Due to the absence of a set date for a decision in Hayward, the court will not stay this action pending a decision in Hayward. See Yong v. INS, 208 F.3d 1116, 1120-22 (9th Cir. 2000) (it is an abuse of discretion for a district court to stay a habeas petition indefinitely pending resolution of a different case involving parallel issues on the basis of judicial economy). The motion for a stay is DENIED. (Docket # 6.)

1 Petitioner's motion for the court to grant habeas relief due to respondent's failure to
2 prosecute is DENIED. (Docket # 8.) Respondent did not fail to defend this action:
3 respondent had filed a motion to stay the action and reasonably was waiting for a ruling on
4 that motion because the ruling could affect the deadline for filing an answer.

5 In light of the denial of the motion to stay, the court now sets the following briefing
6 schedule: Respondent must file and serve his answer no later than **June 12, 2009**.
7 Petitioner must file and serve his traverse no later than **July 24, 2009**.

8 IT IS SO ORDERED.

9 DATED: March 11, 2009


Marilyn Hall Patel
United States District Judge